

Message

From: Smith, DavidW [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=911849B6D8DB4194AC6D4B69051E3B74-DSMITH06]
Sent: 8/10/2018 3:59:50 PM
To: Deborah.Smith@waterboards.ca.gov; Renee.Purdy@waterboards.ca.gov; Karen.Larsen@waterboards.ca.gov; jsbishop@waterboards.ca.gov
Subject: Fwd: LA Waterkeeper v. Pruitt / UNFAVORABLE DECISION
Attachments: Order on Summary Judgment 8-9-2018.pdf; ATT00001.htm

FYI. We will be in touch soon to discuss; we are weighing our options
Dave Smith

Sent from my iPhone

Begin forwarded message:

From: "Kermish, Laurie" <Kermish.Laurie@epa.gov>
Date: August 10, 2018 at 7:57:40 AM PDT
To: "Torres, Tomas" <Torres.Tomas@epa.gov>, "Gullatt, Kristin" <Gullatt.Kristin@epa.gov>
Cc: "Smith, DavidW" <Smith.DavidW@epa.gov>, "Blake, Ellen" <Blake.Ellen@epa.gov>
Subject: Fwd: LA Waterkeeper v. Pruitt / UNFAVORABLE DECISION

This may generate press calls. HQ is aware. I'm working at home and ec500 is on if you need to reach me.

Sent from my iPhone

Begin forwarded message:

From: "Levine, MaryEllen" <levine.maryellen@epa.gov>
Date: August 10, 2018 at 6:53:11 AM PDT
To: OGC Senior MGMT <OGC_Senior_MGMT@epa.gov>, OGC Immediate Office Support <OGCFrontOfficeSupportStaff@epa.gov>, OGC WLO <OGC_WLO@epa.gov>
Cc: "Sawyers, Andrew" <Sawyers.Andrew@epa.gov>, "Gutierrez, Sally" <Gutierrez.Sally@epa.gov>, "Klinger, Adam" <Klinger.Adam@epa.gov>, "Klinger, Adam" <Klinger.Adam@epa.gov>, "Urban, Rachel" <Urban.Rachel@epa.gov>, "Drinkard, Andrea" <Drinkard.Andrea@epa.gov>, "Pollins, Mark" <Pollins.Mark@epa.gov>, "Denton, Loren" <Denton.Loren@epa.gov>, "Bahk, Benjamin" <Bahk.Benjamin@epa.gov>, "Schaner, Greg" <Schaner.Greg@epa.gov>, "Kermish, Laurie" <Kermish.Laurie@epa.gov>, "Blake, Ellen" <Blake.Ellen@epa.gov>, "Duchovnay, Andrew" <Duchovnay.Andrew@epa.gov>, "Williams, Ann" <Williams.Ann@epa.gov>, "Cirino, Paul (ENRD)" <Paul.Cirino@usdoj.gov>
Subject: FW: LA Waterkeeper v. Pruitt / UNFAVORABLE DECISION

On August 9, 2018, the U.S. District Court for the Central District of California granted plaintiffs' motion for summary judgment finding that EPA acted arbitrarily and capriciously in denying Plaintiffs' petition to designate commercial, institutional and industrial sites in the Dominguez and Los Cerritos Channel watersheds in Los Angeles as regulated stormwater discharges under the Clean Water Act. Under CWA section 402(p), no stormwater discharges are regulated unless they fall under one of five categories, the fifth of which is a discharge that the Administrator determines contributes to a violation of a water quality standard or is a significant contributor of a

pollutant to a water of the United States. Citing *Entergy Corp. v. Riverkeeper, Inc.*, 556 U.S. 208, 222 (2009), EPA argued that it could consider the adequacy of existing controls as a relevant factor and the court disagreed, citing *Massachusetts v. EPA*. 549 U.S. 497 (2007), concluding that the Clean Water Act requires EPA "to either (1) engage in the NPDES permitting process for the discharge at issue or (2) prohibit the discharge."

We will be discussing next steps with the Department of Justice. If you have any questions concerning this matter, please contact Mary Ellen Levine at 202 564-1345. Pete Ford (202) 564-5593 handles this matter for us and will be back in the office August 22, 2018.

- *Mary Ellen*

Mary Ellen Levine
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